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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/477,880	01/05/2000	Donald Edgar Blahut	48-5-3-16-4-7	9862

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Docket Administrator Room 3C 512  
Lucent Technologies Inc  
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EXAMINER

GECKIL, MEHMET B

ART UNIT

PAPER NUMBER

2142

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/477,880	<b>Applicant(s)</b> BLAHUT ET AL.
<b>Examiner</b>	<b>Art Unit</b>	
Mehmet B. Geckil	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 05 January 2000.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1,2,4,5 and 7-32 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,2,4,5 and 7-32 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_ .

1. Claims 1-2, 4-5, 7-32 are presented for examination.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-2, 4-5 and 7-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 6,065,061. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference in scope is not substantial enough therefore it would have been obvious for one of ordinary skill in the networking art to bridge what was taught before and what is disclosed in the present application.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 4-5, and 7-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al in view of well known techniques of routing.
6. Jones et al (5,903,558) taught the invention substantially as claimed including an apparatus and method for providing Internet communications services over a cable television (CATV) access network to an endpoint having a cable modem via a primary cable communications channel, and also via a separate secondary ISDN communications channel, the system comprising a primary data routing path via cable router (figure 3, element 304) for routing data to the endpoint and a secondary data routing path (figure 3, element 306) for routing data between the endpoint and the Internet or headend which is connected to the Internet (e.g., see columns 4-7) wherein the system monitored the QoS parameters for a threshold and when the threshold reached the system automatically switched from the primary connection to activating using the secondary connection provided by the ISDN line (col 4, line 50 et seq; col 5, line 5 et seq; col 6, line 30 et seq; and col 8, line 37 et seq). Jones et al did not specify due to the scope of their teaching that their system used routing table for switching from the primary line to the secondary line, or that the primary line and secondary lines used different IP numbers but they stated that it would be obvious to one of ordinary skill in the art that the elements of the data processing system including the router were conventional and operated in conventional manner. Jones et al further stated that

routers shown in figures 2-3 use the components depicted in figure 4 (e.g., see column 6 line 2 et seq and col 8, line 19 et seq.) Figures 2-3 show ISDN/ETHERNET router. Obviously Ethernet router is a data router and operates according to the TCP/IP standards. Column 7, line 63 et seq teaches using ping test. It is well known to those one skill in the networking art that the ping test is used as part of the TCP/IP protocol. Routers that connect to the Internet also use TCP/IP protocol and TCP/IP protocol uses IP numbers for routing. These are all well known and conventional knowledge. It is inherent in the router that the router uses a router table in order to route the data. Jones et al over and over again taught throughout the patent switching from one type of connection to another type of connection when user defined parameters indicate that one type of the connection fails to meet the parameters (col 5, line 5 et seq; col 6, line 38 et seq and col 8, lines 37-64.) Jones et al system included two different interfaces for routing data for two different types of connections, e.g., shared and unshared, see figures 2-3. These interfaces inherently hold address information in order to route the data otherwise the system would not operate and would not be able to route data. Obviously, in the case of Internet and TCP/IP protocol, the interfaces would use IP numbers to identify the interface. In the case of other protocols, the interfaces would use identifiers or addresses whatever that protocols specifies (e.g., see claimed CM identifier.) It would have been obvious to one of ordinary skill in the networking art at the time of the invention that the claimed invention differed from the teachings of Jones et al only by a degree, e.g., using the thresholds of the QoS to monitor health or state or congestion of the link and when the set condition are reached switch using the

secondary line to provide a fault safe or redundant system or to provide better QoS to the end user. Other claimed features are all obvious variations of the well known features of cable modem and Internet communication. For example, claims recite detecting service interruption in order to switch to another connection. But this is obvious variations of detecting QoS parameters defines by the user in order to switch from shared connection type of Jones et al to unshared connection type. Jones et al further specified that other parameters other than the examples taught by them could be used (col 5, line 5 et seq.) Applicant's idea of providing a backup line in case of problem with the main communications line is not new and Jones et al teachings is a testimony for that. It would have been obvious to one of ordinary skill in the cable modem communications art at the time of the invention that transporting well known features of fault tolerant art into cable modem technology does not constitute an invention but merely a skill of a technician not deserving to be qualified as an invention. Claims also recite "tunneling" but tunneling is an obvious variation of establishing the secondary channel, e.g. by calling the ISP with a ppp protocol or any other protocol which establishes another connection to the ISP, e.g., could be an ISDN line or could be VPN line (VPN tunneling is also well known in the art.) Tunneling in this context is known to be an establishment of a communication line between the user and the ISP using the Internet. New claims 18-32 recite cable TV access network and non-cable TV access network and its various physical implementations. It would have been obvious to one of ordinary skill in the cable modem communications art and general networking art at the time of the invention that implementing non-primary connection channel which

has a different protocol in non-cable TV access network is an obvious variation of implementing different protocol within the cable TV access network, e.g., implementing the ISDN protocol based non-shared connection within the cable TV access network. The end result would be the same, i.e., the data would be sent to destination end-points in the different protocol.

7. Claims 1-2, 4-5, and 7-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al in view of Atarashi et al.
8. Jones et al teachings are incorporated by reference from the paragraph 6 hereinabove. In the paragraph 6 hereinabove examiner stated that routing features was well known. Atarashi et al (6,173,312) taught server switching upon failure to a backup server from a working server using the routers (see Figure 9 and related information in columns 12-13) to change the routing table and mapping (col 13, lines 25-40.) It would have been obvious to one of ordinary skill in the networking art at the time of the invention to combine the teachings of Jones et al and Atarashi et al because Atarashi et al routing table and routing table changing and mapping teachings would improve Jones et al switching to an alternative backup route or address for increased reliability. Also it should be noted that the router switches to an alternate route of the alternate backup server from the working server when the working server's service is interrupted (col 13.)
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mehmet Geckil whose telephone number is (703) 305-9676. The examiner can normally be reached on Monday through Friday from 6:30 A.M. to 3:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Jack Harvey, can be reached on (703) 305-9705. The fax phone numbers for the organization where this application or proceeding is assigned are listed hereinbelow.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3800/4700. Customer service number is (703) 306-5631.

**Any response to this action should be mailed to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**or faxed to:**

(703) 872-9306

Hand-delivered responses should be brought to Crystal Park II, 2021 Crystal Drive, Arlington, VA., Fourth Floor (Receptionist).

10/4/04



MEHMET B. GECKIL  
PRIMARY EXAMINER